

OPEN MEETING



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ORIGINAL

MEMORANDUM

Arizona Corporation Commission

DOCKETED

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2015 FEB 12 P 1:27

TO: THE COMMISSION

FEB 12 2015

FROM: Utilities Division

DOCKETED BY

AZ CORP COMMISSION
DOCKET CONTROL

DATE: February 12, 2015

RE: IN THE MATTER OF THE APPLICATION OF FIRST CHOICE TECHNOLOGY, INC. AND IBFA ACQUISITION COMPANY, LLC FOR APPROVAL OF A PURCHASE AGREEMENT (DOCKET NOS. T-20400A-14-0296 AND T-04314A-14-0296)

On August 4, 2014, counsel for First Choice Technology, Inc. ("First Choice") and the duly appointed Receiver for IBFA Acquisition Company, LLC ("IBFA") (together, "Applicants"), filed an application notifying the Arizona Corporation Commission ("Commission") of a Purchase Agreement whereby First Choice will acquire substantially all of the long distance customer assets of IBFA (the "Acquisition"). This includes, but is not limited to, IBFA's customer accounts in the State of Arizona.

In support of this filing, Applicants provide the following information.

Introduction

On January 23, 2014, Thermo Credit, LLC ("Thermo"), the secured creditor of IBFA, filed a Petition to Register Foreign Judgment Filed ("Petition") with the Circuit Court of Cook County, Illinois ("Court"). This Petition initiated a Uniform Commercial Code-1 ("UCC-1") foreclosure of IBFA's assets by Thermo and was subsequently approved by the Court.¹

Pursuant to a July 23, 2014 Court Order and Secured Creditor's Bill of Sale, First Choice was awarded the assets of IBFA as the result of an auction (also known as a UCC-1 sale) held by Thermo. First Choice, as the highest bidder, acquired ownership, right, title and interest in and to all of IBFA's long distance assets, including its customer accounts and Thermo received the purchase price pursuant to the provisions of the Bill of Sale.

Description of the Applicants

A. First Choice Technology, Inc.

¹ A UCC-1 Financing Statement filing is a state approved filing for a lender to file against a debtor in order to place the lender in position to collect debt owed to the lender by the debtor in the event the debtor becomes insolvent. For example, a bank will place a UCC-1 against a company they loan money to until the loan is paid.

First Choice holds a Certificate of Convenience and Necessity ("CC&N") to provide competitive resold long distance telecommunications services in Arizona pursuant to Decision No. 70345.

B. Receiver for IBFA Acquisition Company, LLC

Pursuant to a May 23, 2014 Court Order, Mr. Scott Howsare was appointed the Receiver of IBFA. Mr. Howsare also serves as President of First Choice. However, in his role as Receiver, Mr. Howsare acted on behalf of Thermo Credit and not on behalf of First Choice. Mr. Howsare was selected by Thermo Credit to act as a Receiver due to his prior experience in matters of this type and his prior professional relationship with Thermo Credit.

Description of the Transaction

The Applicants state the Acquisition proposes to consolidate the long distance business and customer accounts of IBFA with those of First Choice in order to create a single, larger provider of telecommunications services, facilitating efficiencies to benefit all of the Applicants' customers. IBFA's (4) four long distance customers affected by this Acquisition will be given the opportunity to switch their service to an alternate carrier and those who choose not to switch their service will continue to receive uninterrupted service from First Choice. First Choice anticipates that none of the customers will experience any change in rates or services and to the extent any of IBFA's rates are not presently included in First Choice's tariffs, First Choice will amend its tariffs accordingly to include such rates.

Staff's Analysis

Request for Waiver of Slamming Rules

The Applicants seek a waiver of Arizona Administrative Code ("A.A.C.") R14-2-1901 to - 1913, the Slamming Rules.² The Applicants indicate that a customer notice of the pending transfer of customers from IBFA to First Choice was delivered on or about September 1, 2014. The notice informed the IBFA customers of the transfer pursuant to Section 47 C.F.R. § 64.1120(e)(3) of the Federal Communications Commission's ("FCC's") rules. Staff has reviewed the notice that was sent to those affected customers. Because the notice informs customers that the rates, terms and conditions of service will not change as a result of the proposed transactions and informs customers that they may subscribe to the telecommunications service provider of their choice, Staff believes the Commission's Slamming Rules should be waived in this matter.

Waiver of A.A.C. R14-2-1107 (A)(2) and (B)

The Applicants also seek a waiver of the customer notice section of A.A.C. R14-2-1107 (A)(2) and the publication requirement specified in A.A.C. R14-2-1107 (B).³ As mentioned,

² See Response to Staff Data Request STF 1.14 filed on October 1, 2014.

³ See Response to Staff Data Request STF 1.13 filed on October 1, 2014.

customers have received notice as required by the FCC. Staff believes that a waiver of A.A.C. R14-2-1107 (A)(2) and (B) is appropriate in this circumstance as service to the affected customers will not be abandoned or discontinued and IBFA's customers will continue to receive service under the same rates, terms and conditions.

Complaints and Compliance

The Consumer Services Section of the Utilities Division reports that there have been no complaints, inquiries, or opinions about First Choice or IBFA from January 1, 2011 to the present. According to the Corporations Division, both First Choice and IBFA are in good standing. First Choice is current with its Utilities Annual Report filings; however IBFA did not file its 2013 Utilities Annual Report. A check of the Compliance Database by the Compliance Section of the Utilities Division indicates there are currently no delinquencies for First Choice and IBFA.

Staff Recommendations

Staff recommends approval of the Application of First Choice and the Receiver for IBFA for First Choice to acquire the Arizona customers of IBFA. Staff further recommends that approval be conditioned on the following:

- a. That First Choice provide notice to Docket Control within thirty (30) days following completion of the proposed transaction in this Application.
- b. An affidavit, verifying the customer notice described previously has been delivered to the affected customers, should be filed by First Choice with Docket Control within thirty (30) days of the effective date of a Decision in this matter.
- c. That First Choice file an updated tariff, within thirty (30) days of the effective date of a Decision in this matter, to incorporate the rates, terms and conditions of service that were included in the IBFA tariff.

Staff believes the Commission's Slamming and Discontinuance Rules all apply to this transaction. However, based on the above, Staff recommends the following:

- a. A waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases because the notice informs customers that the rates, terms and conditions of service will not change as a result of this proposed transfer and informs customers that they may subscribe to the telecommunications service provider of their choice;
- b. A waiver of A.A.C. R14-2-1107 (A)(2), which governs a telecommunications company's verification that all affected customers have been notified of the proposed discontinuance of service and that all affected customers will have access to an alternative interexchange service provider.

THE COMMISSION

February 12, 2015

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- c. A waiver of A.A.C. R14-2-1107 (B), which requires that the Applicant publish legal notice of the application in all counties affected by the application, describing with particularity the substance of the application.

IBFA holds a CC&N to provide competitive resold interexchange telecommunications services (except local exchange services) in Arizona pursuant to Decision No. 69649. IBFA was a Michigan limited liability company with headquarters located at 353 Sacramento Street, Suite 1500, San Francisco, CA 94111. Following the completion of the customer transfer transaction, IBFA will be an entity with no Arizona customers and no longer providing service in Arizona. As mentioned, IBFA is delinquent in filing their 2013 Utilities Annual Report. Additionally, Staff attempts to contact the last known point of contact for IBFA via email, telephone and certified letter generated no response. While neither First Choice nor IBFA have requested cancellation of IBFA's CC&N, given the preceding, Staff recommends the CC&N of IBFA be cancelled subject to the following:

- a. A copy of the Memo and proposed Order for this case will be delivered to IBFA at IBFA's last known address and placed in its CC&N Docket No. T-04314A-05-0338.
- b. IBFA will be given sixty (60) days from the date of the Order in this Docket to object to cancellation of its CC&N and request a Hearing if it so desires.
- c. A separate notice will be sent to IBFA, with a copy of the Order attached, stating that they have sixty (60) days from the date of the Order to object to cancellation of its CC&N and request a Hearing, or cancellation of its CC&N will occur.
- d. If, after sixty (60) days have expired with no response from IBFA, Staff should docket a Report and Order recommending cancellation of IBFA's CC&N.



Steven M. Olea
Director
Utilities Division

SMO:MAC:sms\MAS

ORIGINATOR: Matt Connolly

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 BOB STUMP

Chairman

3 GARY PIERCE

Commissioner

4 BRENDA BURNS

Commissioner

5 BOB BURNS

Commissioner

6 SUSAN BITTER SMITH

Commissioner

7
8 IN THE MATTER OF THE APPLICATION }
9 OF FIRST CHOICE TECHNOLOGY, INC. }
10 AND IBFA ACQUISITION COMPANY FOR }
11 APPROVAL OF A PURCHASE }
12 AGREEMENT. }

DOCKET NOS. T-20400A-14-0296

T-04314A-14-0296

DECISION NO. _____

ORDER

12 Open Meeting
13 March 16 and 17, 2015
14 Phoenix, Arizona

14 BY THE COMMISSION:

15 FINDINGS OF FACT

16 1. On August 4, 2014, counsel for First Choice Technology, Inc. ("First Choice") and
17 the duly appointed Receiver for IBFA Acquisition Company, LLC ("IBFA") (together, "Applicants"),
18 filed an application notifying the Arizona Corporation Commission ("Commission") of a Purchase
19 Agreement whereby First Choice will acquire substantially all of the long distance customer assets of
20 IBFA (the "Acquisition"). This includes, but is not limited to, IBFA's customer accounts in the State
21 of Arizona.

22 2. In support of this filing, Applicants provide the following information.

23 Introduction

24 3. On January 23, 2014, Thermo Credit, LLC ("Thermo"), the secured creditor of IBFA,
25 filed a Petition to Register Foreign Judgment Filed ("Petition") with the Circuit Court of Cook

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1 County, Illinois ("Court"). This Petition initiated a Uniform Commercial Code-1 ("UCC-1")
2 foreclosure of IBFA's assets by Thermo and was subsequently approved by the Court.¹

3 4. Pursuant to a July 23, 2014, Court Order and Secured Creditor's Bill of Sale, First
4 Choice was awarded the assets of IBFA as the result of an auction (also known as a UCC-1 sale) held
5 by Thermo. First Choice, as the highest bidder, acquired ownership, right, title and interest in and to
6 all of IBFA's long distance assets, including its customer accounts, and Thermo received the purchase
7 price pursuant to the provisions of the Bill of Sale.

8 **Description of the Applicants**

9 A. First Choice Technology, Inc.

10 5. First Choice holds a Certificate of Convenience and Necessity ("CC&N") to provide
11 competitive resold long distance telecommunications services in Arizona pursuant to Decision No.
12 70345.

13 B. Receiver for IBFA Acquisition Company, LLC.

14 6. Pursuant to a May 23, 2014 Court Order, Mr. Scott Howsare was appointed the
15 Receiver of IBFA. Mr. Howsare also serves as President of First Choice. However, in his role as
16 Receiver, Mr. Howsare acted on behalf of Thermo Credit and not on behalf of First Choice. Mr.
17 Howsare was selected by Thermo Credit to act as a Receiver due to his prior experience in matters of
18 this type and his prior professional relationship with Thermo Credit.

19 **Description of the Transaction**

20 7. The Applicants state the Acquisition proposes to consolidate the long distance
21 business and customer accounts of IBFA with those of First Choice in order to create a single, larger
22 provider of telecommunications services, facilitating efficiencies to benefit all of the Applicants
23 customers. IBFA's (4) four long distance customers affected by this Acquisition will be given the
24 opportunity to switch their service to an alternate carrier; those who choose not to switch their service
25 will continue to receive uninterrupted service from First Choice. First Choice anticipates that none of
26 the customers will experience any change in rates or services and, to the extent any of IBFA's rates are

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28 ¹ A UCC-1 Financing Statement filing is a state approved filing for a lender to file against a debtor in order to place
the lender in position to collect debt owed to the lender by the debtor in the event the debtor becomes insolvent. For
example, a bank will place a UCC-1 against a company they loan money to until the loan is paid.

1 not presently included in First Choice's tariffs, First Choice will amend its tariffs accordingly to
2 include such rates.

3 **Request for Waiver of Slamming Rules**

4 8. The Applicants seek a waiver of Arizona Administrative Code ("A.A.C.") R14-2-1901
5 to -1913, the Slamming Rules.² The Applicants indicate that a customer notice of the pending transfer
6 of customers from IBFA to First Choice was delivered on or about September 1, 2014. The notice
7 informed the IBFA customers of the transfer pursuant to Section 47 C.F.R. § 64.1120(e)(3) of the
8 Federal Communications Commission's ("FCC's") rules.

9 9. Staff has reviewed the notice that was sent to those affected customers. Because the
10 notice informs customers that the rates, terms and conditions of service will not change as a result of
11 the proposed transactions and informs customers that they may subscribe to the telecommunications
12 service provider of their choice, Staff believes the Commission's Slamming Rules should be waived in
13 this matter.

14 **Request for Waivers of A.A.C. R14-2-1107 (A)(2) and (B)**

15 10. The Applicants also seek a waiver of the customer notice section of A.A.C. R14-2-
16 1107 (A)(2) and the publication requirement specified in A.A.C. R14-2-1107 (B).³ As mentioned,
17 customers have received notice as required by the FCC. Staff believes that a waiver of A.A.C. R14-2-
18 1107 (A)(2) and (B) is appropriate in this circumstance as service to the affected customers will not be
19 abandoned or discontinued and IBFA's customers will continue to receive service under the same
20 rates, terms and conditions.

21 **Complaints and Compliance**

22 11. The Consumer Services Section of the Utilities Division reports that there have been no
23 complaints, inquiries, or opinions about First Choice or IBFA from January 1, 2011, to the present.
24 According to the Corporations Division, both First Choice and IBFA are in good standing. First
25 Choice is current with its Utilities Annual Report filings; however, IBFA did not file its 2013 Utilities
26 Annual Report. A check of the Compliance Database by the Compliance Section of the Utilities
27 _____

28 ² See Response to Staff Data Request STF 1.14 filed on October 1, 2014.

³ See Response to Staff Data Request STF 1.13 filed on October 1, 2014.

1 Annual Report. A check of the Compliance Database by the Compliance Section of the Utilities
2 Division indicates there are currently no delinquencies for First Choice and IBFA. .

3 **Staff Recommendations**

4 12. Staff recommends approval of the Application of First Choice and the Receiver for
5 IBFA for First Choice to acquire the Arizona customers of IBFA. Staff further recommends that
6 approval be conditioned on the following:

- 7 A. That First Choice provide notice to Docket Control within thirty (30) days following
8 completion of the proposed transaction in this Application;
- 9 B. an affidavit, verifying the customer notice described previously has been delivered to
10 the affected customers, should be filed by First Choice with Docket Control within
11 thirty (30) days of the effective date of a Decision in this matter; and
- 12 C. that First Choice file an updated tariff, within thirty (30) days of the effective date of a
13 Decision in this matter, to incorporate the rates, terms and conditions of service that
14 were included in the IBFA tariff.

15 13. Staff believes the Commission's Slamming and Discontinuance Rules all apply to this
16 transaction. However, based on the above, Staff recommends the following:

- 17 A. A waiver of A.A.C. R14-2-1904, et seq. and any other applicable anti-slamming
18 regulations that may be inconsistent with the FCC's rules regarding the transfer of
19 customer bases because the notice informs customers that the rates, terms and
20 conditions of service will not change as a result of this proposed transfer and informs
21 customers that they may subscribe to the telecommunications service provider of their
22 choice;
- 23 B. a waiver of A.A.C. R14-2-1107(A)(2), which governs a telecommunications company's
24 verification that all affected customers have been notified of the proposed
25 discontinuance of service and that all affected customers will have access to an
26 alternative interexchange service provider; and
- 27 C. a waiver of A.A.C. R14-2-1107(B), which requires that the Applicant publish legal
28 notice of the application in all counties affected by the application, describing with
particularity the substance of the application.

14. IBFA holds a CC&N to provide competitive resold interexchange telecommunications
services (except local exchange services) in Arizona pursuant to Decision No. 69649. IBFA was a
Michigan limited liability company with headquarters located at 353 Sacramento Street, Suite 1500,
San Francisco, CA 94111.

- A. A copy of the Memo and proposed Order for this case will be delivered to IBFA at IBFA's last known address and placed in its CC&N Docket No. T-04314A-05-0338;
- B. IBFA will be given sixty (60) days from the date of the Order in this Docket to object to cancellation of its CC&N and request a Hearing if it so desires;
- C. a separate notice will be sent to IBFA, with a copy of the Order attached, stating that the company has sixty (60) days from the date of the Order to object to cancellation of its CC&N and request a Hearing or cancellation of its CC&N will occur; and
- D. if, after sixty (60) days have expired with no response from IBFA, Staff should docket a Report and Order recommending cancellation of IBFA's CC&N.

1. First Choice Technology, Inc. and IBFA Acquisition Company, LLC are public service corporations within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over First Choice Technology, Inc. and IBFA Acquisition Company, LLC and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated February 12, 2015, concludes that it is in the public interest to grant approval as proposed and discussed herein.

IT IS THEREFORE ORDERED that the Application of First Choice Technology, Inc. and IBFA Acquisition Company, LLC to acquire the customer assets of First Choice Technology, Inc. be and hereby is approved as discussed herein.

IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases be and hereby is approved.

1 IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1107 (A)(2),
2 governing a telecommunications company's verification that all affected customers have been notified
3 of the proposed transfer and A.A.C. R14-2-1107 (B), which requires that the Applicant publish legal
4 notice of the application in all counties affected by the application, be and hereby is approved.

5 IT IS FURTHER ORDERED that, within thirty (30) days following the closing of the
6 proposed transaction, First Choice Technology, Inc. and IBFA Acquisition Company, LLC inform the
7 Commission by filing an affidavit with Docket Control that transaction-related activities are
8 completed.

9 IT IS FURTHER ORDERED that, within thirty (30) days following the closing of the
10 proposed transaction, First Choice Technology, Inc. and IBFA Acquisition Company, LLC inform the
11 Commission by filing an affidavit with Docket Control that verifies the customer notice has been
12 delivered to all affected customers.

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1 IT IS FURTHER ORDERED that First Choice Technology, Inc. file an updated tariff, within
2 thirty (30) days of the effective date of a Decision in this matter, to incorporate the rates, terms and
3 conditions of service that were included in the IBFA Acquisition Company, LLC tariff.

4 IT IS FURTHER ORDERED that a process shall commence to cancel IBFA Acquisition
5 Company, LLC's CC&N consistent with Finding of Fact 15.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

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8 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

9
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11 CHAIRMAN

COMMISSIONER

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13 COMMISSIONER

COMMISSIONER

COMMISSIONER

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15 IN WITNESS WHEREOF, I, JODI JERICH, Executive
16 Director of the Arizona Corporation Commission, have
17 hereunto, set my hand and caused the official seal of this
18 Commission to be affixed at the Capitol, in the City of
19 Phoenix, this _____ day of _____, 2014.

20 _____
21 JODI JERICH
22 EXECUTIVE DIRECTOR

23 DISSENT: _____

24 DISSENT: _____

25 SMO:MAC:sms\MAS
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1 SERVICE LIST FOR: FIRST CHOICE TECHNOLOGY, INC. AND IBFA ACQUISITION
2 COMPANY, LLC

3 DOCKET NOS.: T-20400A-14-0296 AND T-04314A-14-0296

4 Mr. Leon Nowalsky, Esq.
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20 Chief Administrative Law Judge, Hearing Division
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